

Chapter 36

Cohabitant Abuse Procedures Act

77-36-1 Definitions.

As used in this chapter:

- (1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.
- (2) "Department" means the Department of Public Safety.
- (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter 3, Divorce.
- (4) "Domestic violence" or "domestic violence offense" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another. "Domestic violence" or "domestic violence offense" also means commission or attempt to commit, any of the following offenses by one cohabitant against another:
 - (a) aggravated assault, as described in Section 76-5-103;
 - (b) assault, as described in Section 76-5-102;
 - (c) criminal homicide, as described in Section 76-5-201;
 - (d) harassment, as described in Section 76-5-106;
 - (e) electronic communication harassment, as described in Section 76-9-201;
 - (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;
 - (g) mayhem, as described in Section 76-5-105;
 - (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Section 76-5b-201, Sexual Exploitation of a Minor;
 - (i) stalking, as described in Section 76-5-106.5;
 - (j) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;
 - (k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;
 - (l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6, Part 3, Robbery;
 - (m) possession of a deadly weapon with intent to assault, as described in Section 76-10-507;
 - (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508;
 - (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with a domestic violence offense otherwise described in this Subsection (4). Conviction of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.; or
 - (p) child abuse as described in Section 76-5-109.1.
- (5) "Jail release agreement" means a written agreement:
 - (a) specifying and limiting the contact a person arrested for a domestic violence offense may have with an alleged victim or other specified individuals; and
 - (b) specifying other conditions of release from jail as required in Subsection 77-36-2.5(2).
- (6) "Jail release court order" means a written court order:
 - (a) specifying and limiting the contact a person arrested for a domestic violence offense may have with an alleged victim or other specified individuals; and

- (b) specifying other conditions of release from jail as required in Subsection 77-36-2.5(2).
- (7) "Marital status" means married and living together, divorced, separated, or not married.
- (8) "Married and living together" means a man and a woman whose marriage was solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.
- (9) "Not married" means any living arrangement other than married and living together, divorced, or separated.
- (10) "Pretrial protective order" means a written order:
 - (a) specifying and limiting the contact a person who has been charged with a domestic violence offense may have with an alleged victim or other specified individuals; and
 - (b) specifying other conditions of release pursuant to Subsection 77-36-2.5(2), Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.
- (11) "Sentencing protective order" means a written order of the court as part of sentencing in a domestic violence case that limits the contact a person who has been convicted of a domestic violence offense may have with a victim or other specified individuals pursuant to Sections 77-36-5 and 77-36-5.1.
- (12) "Separated" means a man and a woman who have had their marriage solemnized under Section 30-1-4 or 30-1-6 and who are not living in the same residence.
- (13) "Victim" means a cohabitant who has been subjected to domestic violence.

Amended by Chapter 422, 2016 General Session

77-36-1.1 Enhancement of offense and penalty for subsequent domestic violence offenses.

- (1) For purposes of this section, "qualifying domestic violence offense" means:
 - (a) a domestic violence offense in Utah; or
 - (b) an offense in any other state, or in any district, possession, or territory of the United States, that would be a domestic violence offense under Utah law.
- (2) A person who is convicted of a domestic violence offense is:
 - (a) guilty of a class B misdemeanor if:
 - (i) the domestic violence offense described in this Subsection (2) is designated by law as a class C misdemeanor; and
 - (ii)
 - (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or
 - (B) the person is convicted of the domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense;
 - (b) guilty of a class A misdemeanor if:
 - (i) the domestic violence offense described in this Subsection (2) is designated by law as a class B misdemeanor; and
 - (ii)
 - (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or
 - (B) the person is convicted of the domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense;
 - (c) guilty of a felony of the third degree if:
 - (i) the domestic violence offense described in this Subsection (2) is designated by law as a class A misdemeanor; and
 - (ii)

- (A) the domestic violence offense described in this Subsection (2) is committed within five years after the person is convicted of a qualifying domestic violence offense; or
- (B) the person is convicted of the domestic violence offense described in this Subsection (2) within five years after the person is convicted of a qualifying domestic violence offense.

Amended by Chapter 426, 2015 General Session

77-36-1.2 Acceptance of a plea of guilty or no contest to domestic violence -- Restrictions.

- (1) For purposes of this section, "qualifying domestic violence offense" means:
 - (a) a domestic violence offense in Utah; or
 - (b) an offense in any other state, or in any district, possession, or territory of the United States, that would be a domestic violence offense under Utah law.
- (2) For purposes of this section and Section 77-36-1.1, a plea of guilty or no contest to any domestic violence offense in Utah, which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.
- (3)
 - (a) Before agreeing to a plea of guilty or no contest or to filing an information, the prosecutor shall examine the criminal history of the defendant.
 - (b) The court may not accept a plea of guilty or no contest to a domestic violence offense, unless:
 - (i) the prosecutor agrees to the plea:
 - (A) in open court;
 - (B) in writing; or
 - (C) by another means of communication that the court finds adequate to record the prosecutor's agreement; or
 - (ii)
 - (A) the domestic violence offense is filed by information;
 - (B) the court receives a copy of the defendant's criminal history; and
 - (C) the criminal history contains no record of a conviction or a pending charge of a qualifying domestic violence offense within five years before the date on which the plea is entered.
 - (c) A plea of guilty or no contest is not made invalid by the failure of a court, a prosecutor, or a law enforcement agency to comply with this section.

Enacted by Chapter 426, 2015 General Session

77-36-2.1 Duties of law enforcement officers -- Notice to victims.

- (1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including:
 - (a) taking the action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;
 - (b) confiscating the weapon or weapons involved in the alleged domestic violence;
 - (c) making arrangements for the victim and any child to obtain emergency housing or shelter;
 - (d) providing protection while the victim removes essential personal effects;
 - (e) arrange, facilitate, or provide for the victim and any child to obtain medical treatment; and
 - (f) arrange, facilitate, or provide the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence, in accordance with Subsection (2).
- (2)

- (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, and Title 78B, Chapter 7, Part 2, Child Protective Orders.
- (b) The written notice shall also include:
 - (i) a statement that the forms needed in order to obtain an order for protection are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled;
 - (ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance; and
 - (iii) the information required to be provided to both parties in accordance with Subsection 77-36-2.5(8).

Amended by Chapter 113, 2011 General Session

77-36-2.2 Powers and duties of law enforcement officers to arrest -- Reports of domestic violence cases -- Reports of parties' marital status.

- (1) The primary duty of law enforcement officers responding to a domestic violence call is to protect the victim and enforce the law.
- (2)
 - (a) In addition to the arrest powers described in Section 77-7-2, when a peace officer responds to a domestic violence call and has probable cause to believe that an act of domestic violence has been committed, the peace officer shall arrest without a warrant or shall issue a citation to any person that the peace officer has probable cause to believe has committed an act of domestic violence.
 - (b)
 - (i) If the peace officer has probable cause to believe that there will be continued violence against the alleged victim, or if there is evidence that the perpetrator has either recently caused serious bodily injury or used a dangerous weapon in the domestic violence offense, the officer shall arrest and take the alleged perpetrator into custody, and may not utilize the option of issuing a citation under this section.
 - (ii) For purposes of Subsection (2)(b)(i), "serious bodily injury" and "dangerous weapon" mean the same as those terms are defined in Section 76-1-601.
 - (c) If a peace officer does not immediately exercise arrest powers or initiate criminal proceedings by citation or otherwise, the officer shall notify the victim of the right to initiate a criminal proceeding and of the importance of preserving evidence, in accordance with the requirements of Section 77-36-2.1.
- (3) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who the predominant aggressor was. If the officer determines that one person was the predominant physical aggressor, the officer need not arrest the other person alleged to have committed domestic violence. In determining who the predominant aggressor was, the officer shall consider:
 - (a) any prior complaints of domestic violence;
 - (b) the relative severity of injuries inflicted on each person;
 - (c) the likelihood of future injury to each of the parties; and
 - (d) whether one of the parties acted in self defense.
- (4) A law enforcement officer may not threaten, suggest, or otherwise indicate the possible arrest of all parties in order to discourage any party's request for intervention by law enforcement.

- (5)
 - (a) A law enforcement officer who does not make an arrest after investigating a complaint of domestic violence, or who arrests two or more parties, shall submit a detailed, written report specifying the grounds for not arresting any party or for arresting both parties.
 - (b) A law enforcement officer who does not make an arrest shall notify the victim of the right to initiate a criminal proceeding and of the importance of preserving evidence.
- (6)
 - (a) A law enforcement officer responding to a complaint of domestic violence shall prepare an incident report that includes the officer's disposition of the case.
 - (b) From January 1, 2009 until December 31, 2013, any law enforcement officer employed by a city of the first or second class responding to a complaint of domestic violence shall also report, either as a part of an incident report or on a separate form, the following information:
 - (i) marital status of each of the parties involved;
 - (ii) social, familial, or legal relationship of the suspect to the victim; and
 - (iii) whether or not an arrest was made.
 - (c) The information obtained in Subsection (6)(b):
 - (i) shall be reported monthly to the department;
 - (ii) shall be reported as numerical data that contains no personal identifiers; and
 - (iii) is a public record as defined in Section 63G-2-103.
 - (d) The incident report shall be made available to the victim, upon request, at no cost.
 - (e) The law enforcement agency shall forward a copy of the incident report to the appropriate prosecuting attorney within five days after the complaint of domestic violence occurred.
- (7) The department shall compile the information described in Subsections (6)(b) and (c) into a report and present that report to the Law Enforcement and Criminal Justice Interim Committee during the 2013 interim, no later than May 31, 2013.
- (8) Each law enforcement agency shall, as soon as practicable, make a written record and maintain records of all incidents of domestic violence reported to it, and shall be identified by a law enforcement agency code for domestic violence.

Amended by Chapter 143, 2013 General Session

77-36-2.3 Law enforcement officer's training.

All training of law enforcement officers relating to domestic violence shall stress protection of the victim, enforcement of criminal laws in domestic situations, and the availability of community shelters, services, and resources. Law enforcement agencies and community organizations with expertise in domestic violence shall cooperate in all aspects of that training.

Enacted by Chapter 300, 1995 General Session

77-36-2.4 Violation of protective orders -- Mandatory arrest -- Penalties.

- (1) A law enforcement officer shall, without a warrant, arrest an alleged perpetrator whenever there is probable cause to believe that the alleged perpetrator has violated any of the provisions of an ex parte protective order or protective order.
- (2)
 - (a) Intentional or knowing violation of any ex parte protective order or protective order is a class A misdemeanor, in accordance with Section 76-5-108, except where a greater penalty is provided in this chapter, and is a domestic violence offense, pursuant to Section 77-36-1.

- (b) Second or subsequent violations of ex parte protective orders or protective orders carry increased penalties, in accordance with Section 77-36-1.1.
- (3) As used in this section, "ex parte protective order" or "protective order" includes:
 - (a) any protective order or ex parte protective order issued under Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;
 - (b) any jail release agreement, jail release court order, pretrial protective order, or sentencing protective order issued under Title 77, Chapter 36, Cohabitant Abuse Procedures Act;
 - (c) any child protective order or ex parte child protective order issued under Title 78B, Chapter 7, Part 2, Child Protective Orders; or
 - (d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Amended by Chapter 384, 2010 General Session

77-36-2.5 Conditions for release after arrest for domestic violence -- Jail release agreements -- Jail release court orders.

- (1)
 - (a) Upon arrest for domestic violence, and before the person is released on bail, recognizance, or otherwise, the person may not personally contact the alleged victim of domestic violence.
 - (b) A person who violates Subsection (1)(a) is guilty of a class B misdemeanor.
- (2)
 - (a) After an arrest for domestic violence, the offender may not be released before:
 - (i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or
 - (ii) the offender signs a jail release agreement in accordance with Subsection (2)(d)(i).
 - (b) The arresting officer shall ensure that the information presented to the magistrate includes whether the victim has made a waiver described in Subsection (5)(a).
 - (c) If the magistrate determines there is probable cause to support the charge or charges of domestic violence, the magistrate shall determine:
 - (i) whether grounds exist to hold the arrested person without bail, in accordance with Section 77-20-1;
 - (ii) if no grounds exist to hold the arrested person without bail, whether any release conditions, including electronic monitoring, are necessary to protect the victim; or
 - (iii) any bail that is required to guarantee the defendant's subsequent appearance in court.
 - (d)
 - (i) The magistrate may not release a person arrested for domestic violence before the initial court appearance, before the court with jurisdiction over the offense for which the person was arrested, unless the arrested person agrees in writing or the magistrate orders, as a release condition, that, until the arrested person appears at the initial court appearance, the person will not:
 - (A) have personal contact with the alleged victim;
 - (B) threaten or harass the alleged victim; or
 - (C) knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.
 - (ii) The magistrate shall schedule the appearance described in Subsection (2)(d)(i) to take place no more than 96 hours after the time of the arrest.
 - (iii) The arrested person may make the appearance described in Subsection (2)(d)(i) by video if the arrested person is not released.
- (3)

- (a) If a person charged with domestic violence fails to appear at the time scheduled by the magistrate to appear, as described in Subsection (2)(d), the person shall comply with the release conditions described in Subsection (2)(d)(i) until the arrested person makes an initial appearance.
- (b) If the prosecutor has not filed charges against a person who was arrested for a domestic violence offense and who appears in court at the time scheduled by the magistrate under Subsection (2)(d), or by the court under Subsection (3)(b)(ii), the court:
 - (i) may, upon the motion of the prosecutor and after allowing the arrested person an opportunity to be heard on the motion, extend the release conditions described in Subsection (2)(d)(i) by no more than three court days; and
 - (ii) if the court grants the motion described in Subsection (3)(b)(i), shall order the arrested person to appear at a time scheduled before the end of the granted extension.
- (4) Unless extended under Subsection (3), the jail release agreement or the magistrate order described in Subsection (2)(d)(i) expires at midnight on the day on which the person arrested is scheduled to appear, as described in Subsection (2)(d).
- (5)
 - (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing the release conditions described in Subsection (2)(d)(i)(A) or (C). Upon waiver, those release conditions do not apply to the alleged perpetrator.
 - (b) A court or magistrate may modify the release conditions described in Subsection (2)(d)(i), in writing or on the record, and only for good cause shown.
- (6)
 - (a) When a person is released pursuant to Subsection (2), the releasing agency shall notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the victim. The arresting law enforcement agency shall then make a reasonable effort to notify the victim of that release.
 - (b)
 - (i) When a person is released pursuant to Subsection (2) based on a written jail release agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 78B-7-113.
 - (ii) When a person is released pursuant to Subsections (2) through (4) based upon a jail release court order or if a written jail release agreement is modified pursuant to Subsection (5)(b), the court shall transmit that order to the statewide domestic violence network described in Section 78B-7-113.
 - (iii) A copy of the jail release court order or written jail release agreement shall be given to the person by the releasing agency before the person is released.
 - (c) This Subsection (6) does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.
- (7)
 - (a) If a law enforcement officer has probable cause to believe that a person has violated a jail release court order or jail release agreement executed pursuant to Subsection (2) the officer shall, without a warrant, arrest the alleged violator.
 - (b) Any person who knowingly violates a jail release court order or jail release agreement executed pursuant to Subsection (2) is guilty as follows:
 - (i) if the original arrest was for a felony, an offense under this section is a third degree felony; or
 - (ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.
 - (c) City attorneys may prosecute class A misdemeanor violations under this section.

- (8) An individual who was originally arrested for a felony under this chapter and released pursuant to this section may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.
- (9) At the time an arrest is made for domestic violence, the arresting officer shall provide the alleged victim with written notice containing:
- (a) the release conditions described in Subsections (2) through (4), and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:
 - (i) the alleged perpetrator enters into a written agreement to comply with the release conditions; or
 - (ii) the magistrate orders the release conditions;
 - (b) notification of the penalties for violation of any jail release court order or any jail release agreement executed under Subsection (2);
 - (c) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest;
 - (d) the address of the appropriate court in the district or county in which the alleged victim resides;
 - (e) the availability and effect of any waiver of the release conditions; and
 - (f) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.
- (10) At the time an arrest is made for domestic violence, the arresting officer shall provide the alleged perpetrator with written notice containing:
- (a) notification that the alleged perpetrator may not contact the alleged victim before being released;
 - (b) the release conditions described in Subsections (2) through (4) and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:
 - (i) the alleged perpetrator enters into a written agreement to comply with the release conditions; or
 - (ii) the magistrate orders the release conditions;
 - (c) notification of the penalties for violation of any jail release court order or any written jail release agreement executed under Subsection (2); and
 - (d) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest.
- (11) In addition to the provisions of Subsections (2) through (10), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail.

Amended by Chapter 422, 2016 General Session

77-36-2.6 Appearance of defendant required -- Determinations by court -- Pretrial protective order.

- (1) A defendant who has been arrested for an offense involving domestic violence shall appear in person or by video before the court or a magistrate within one judicial day after the arrest.
- (2) A defendant who has been charged by citation, indictment, or information with an offense involving domestic violence but has not been arrested, shall appear before the court in person for arraignment or initial appearance as soon as practicable, but no later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the indictment or information.
- (3) At the time of an appearance under Subsection (1) or (2), the court shall determine the necessity of imposing a pretrial protective order or other condition of pretrial release including, but not limited to, participating in an electronic or other type of monitoring program, and shall state its findings and determination in writing.
- (4) Appearances required by this section are mandatory and may not be waived.

Amended by Chapter 384, 2010 General Session

77-36-2.7 Dismissal -- Diversion prohibited -- Plea in abeyance -- Pretrial protective order pending trial.

- (1) Because of the serious nature of domestic violence, the court, in domestic violence actions:
 - (a) may not dismiss any charge or delay disposition because of concurrent divorce or other civil proceedings;
 - (b) may not require proof that either party is seeking a dissolution of marriage before instigation of criminal proceedings;
 - (c) shall waive any requirement that the victim's location be disclosed other than to the defendant's attorney and order the defendant's attorney not to disclose the victim's location to the client;
 - (d) shall identify, on the docket sheets, the criminal actions arising from acts of domestic violence;
 - (e) may dismiss a charge on stipulation of the prosecutor and the victim; and
 - (f) may hold a plea in abeyance, in accordance with the provisions of Chapter 2a, Pleas in Abeyance, making treatment or any other requirement for the defendant a condition of that status.
- (2) When the court holds a plea in abeyance in accordance with Subsection (1)(f), the case against a perpetrator of domestic violence may be dismissed only if the perpetrator successfully completes all conditions imposed by the court. If the defendant fails to complete any condition imposed by the court under Subsection (1)(f), the court may accept the defendant's plea.
- (3)
 - (a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any defendant is charged with a crime involving domestic violence, the court may, during any court hearing where the defendant is present, issue a pretrial protective order, pending trial:
 - (i) enjoining the defendant from threatening to commit or committing acts of domestic violence or abuse against the victim and any designated family or household member;
 - (ii) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;
 - (iii) removing and excluding the defendant from the victim's residence and the premises of the residence;

- (iv) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim and any designated family member; and
- (v) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member.
- (b) Violation of an order issued pursuant to this section is punishable as follows:
 - (i) if the original arrest or subsequent charge filed is a felony, an offense under this section is a third degree felony; and
 - (ii) if the original arrest or subsequent charge filed is a misdemeanor, an offense under this section is a class A misdemeanor.
- (c)
 - (i) The court shall provide the victim with a certified copy of any pretrial protective order that has been issued if the victim can be located with reasonable effort.
 - (ii) The court shall also transmit the pretrial protective order to the statewide domestic violence network.
- (d) Issuance of a pretrial or sentencing protective order supercedes a written jail release agreement or a written jail release court order issued by the court at the time of arrest.
- (4)
 - (a) When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a domestic violence offense, the specific reasons for dismissal shall be recorded in the court file and made a part of the statewide domestic violence network described in Section 78B-7-113.
 - (b) The court shall transmit the dismissal to the statewide domestic violence network.
 - (c) Any pretrial protective orders, including jail release court orders and jail release agreements, related to the dismissed domestic violence criminal charge shall also be dismissed.
- (5) When the privilege of confidential communication between spouses, or the testimonial privilege of spouses is invoked in any criminal proceeding in which a spouse is the victim of an alleged domestic violence offense, the victim shall be considered to be an unavailable witness under the Utah Rules of Evidence.
- (6) The court may not approve diversion for a perpetrator of domestic violence.

Amended by Chapter 384, 2010 General Session

77-36-5 Sentencing -- Restricting contact with victim -- Electronic monitoring -- Counseling -- Cost assessed against defendant -- Sentencing protective order.

- (1)
 - (a) When a defendant is found guilty of a crime involving domestic violence and a condition of the sentence restricts the defendant's contact with the victim, a sentencing protective order may be issued under Subsection 77-36-5.1(2) for the length of the defendant's probation.
 - (b)
 - (i) The sentencing protective order shall be in writing, and the prosecutor shall provide a certified copy of that order to the victim.
 - (ii) The court shall transmit the sentencing protective order to the statewide domestic violence network.
 - (c) Violation of a sentencing protective order issued pursuant to this Subsection (1) is a class A misdemeanor.
- (2) In determining its sentence the court, in addition to penalties otherwise provided by law, may require the defendant to participate in an electronic or other type of monitoring program.

- (3) The court may also require the defendant to pay all or part of the costs of counseling incurred by the victim and any children affected by or exposed to the domestic violence offense, as well as the costs for the defendant's own counseling.
- (4) The court shall:
 - (a) assess against the defendant, as restitution, any costs for services or treatment provided to the victim and affected children of the victim or the defendant by the Division of Child and Family Services under Section 62A-4a-106; and
 - (b) order those costs to be paid directly to the division or its contracted provider.
- (5) The court may order the defendant to obtain and satisfactorily complete treatment or therapy in a domestic violence treatment program, as defined in Section 62A-2-101, that is licensed by the Department of Human Services.

Amended by Chapter 422, 2016 General Session

77-36-5.1 Conditions of probation for person convicted of domestic violence offense.

- (1) Before any perpetrator who has been convicted of a domestic violence offense may be placed on probation, the court shall consider the safety and protection of the victim and any member of the victim's family or household.
- (2) The court may condition probation or a plea in abeyance on the perpetrator's compliance with one or more orders of the court, which may include a sentencing protective order:
 - (a) enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;
 - (b) prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;
 - (c) requiring the perpetrator to stay away from the victim's residence, school, place of employment, and the premises of any of these, or a specified place frequented regularly by the victim or any designated family or household member;
 - (d) prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;
 - (e) prohibiting the perpetrator from purchasing, using, or possessing a firearm or other specified weapon;
 - (f) directing the perpetrator to surrender any weapons the perpetrator owns or possesses;
 - (g) directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;
 - (h) directing the perpetrator to pay restitution to the victim; and
 - (i) imposing any other condition necessary to protect the victim and any other designated family or household member or to rehabilitate the perpetrator.
- (3) The perpetrator is responsible for the costs of any condition of probation, according to the perpetrator's ability to pay.
- (4)
 - (a) Adult Probation and Parole, or other provider, shall immediately report to the court and notify the victim of any offense involving domestic violence committed by the perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and any violation of any sentencing criminal protective order issued by the court.
 - (b) Notification of the victim under Subsection (4)(a) shall consist of a good faith reasonable effort to provide prompt notification, including mailing a copy of the notification to the last-known address of the victim.

- (5) The court shall transmit all dismissals, terminations, and expirations of pretrial and sentencing criminal protective orders issued by the court to the statewide domestic violence network.

Amended by Chapter 384, 2010 General Session

77-36-6 Enforcement of orders.

- (1) Each law enforcement agency in this state shall enforce all orders of the court issued pursuant to the requirements and procedures described in this chapter, and shall enforce:
- (a) all protective orders and ex parte protective orders issued pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;
 - (b) jail release agreements, jail release court orders, pretrial protective orders, and sentencing protective orders; and
 - (c) all foreign protection orders enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.
- (2) The requirements of this section apply statewide, regardless of the jurisdiction in which the order was issued or the location of the victim or the perpetrator.

Amended by Chapter 384, 2010 General Session

77-36-7 Prosecutor to notify victim of decision as to prosecution.

- (1) The prosecutor who is responsible for making the decision of whether to prosecute a case shall advise the victim, if the victim has requested notification, of the status of the victim's case and shall notify the victim of a decision within five days after the decision has been made.
- (2) Notification to the victim that charges will not be filed against an alleged perpetrator shall include a description of the procedures available to the victim in that jurisdiction for initiation of criminal and other protective proceedings.

Amended by Chapter 244, 1996 General Session

77-36-8 Peace officers' immunity from liability.

A peace officer may not be held liable in any civil action brought by a party to an incident of domestic violence for making or failing to make an arrest or for issuing or failing to issue a citation in accordance with this chapter, for enforcing in good faith an order of the court, or for acting or omitting to act in any other way in good faith under this chapter, in situations arising from an alleged incident of domestic violence.

Amended by Chapter 300, 1995 General Session

77-36-9 Separability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

Enacted by Chapter 114, 1983 General Session

77-36-10 Authority to prosecute class A misdemeanor violations.

Alleged class A misdemeanor violations of this chapter may be prosecuted by city attorneys.

Enacted by Chapter 244, 1996 General Session